

THE UNFAIRNESS OF ONE-SIDED AGREEMENTS

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INTRODUCTION

When we talk about a contract, we refer to it as an agreement in which both parties are involved in defining the terms and conditions that will eventually form the contract. However, when a specific party is required to enter into a contract with a number of people, it becomes impossible for a person to sit with each party and then decide the terms and conditions of each agreement. It will not only waste contractors' time, but it will also limit a person's ability to enter into a contract with the number of people. To overcome this barrier, a standard form of contract is generally practiced, which is commonly referred to as a unilateral and one-sided agreement. However, these agreements were soon used to transfer the greatest amount of risk to the other party. The same thing can be seen in construction contracts, such as builder-buyer agreements. Nowadays, the imbalance caused by one-sided agreements is a matter of concern.

WHAT ARE ONE-SIDED AGREEMENTS?

One-sided agreements are those in which only one party promises to do something while the other party does not act immediately in the context of the contract. These contracts differ from bilateral contracts in that only one party performs the obligations without the assurance of a reciprocal promise of performance from the other party. A bilateral contract is one in which both parties agree on the terms and conditions of the agreement. One-sided contracts have two parties: one is the offeror, who makes the offer to the other party, and the other is the offeree, who accepts or rejects the offer. In the case of an invitation to offer if the other parties act on the offeror's promise, then the offeror is legally bound to fulfill the contract.

Example of a One-sided contract: Builder-Buyer agreements. The builder-buyer agreement is nothing but an "agreement of sale". It is a mandatory legal document that contains each and every minute detail of the sale and specifies the right and duties of both parties. It is drafted at the time of sale, based on the terms and conditions of the agreement the transaction takes place.

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WHAT ARE UNFAIR TRADE PRACTICES?

Unfair trade practices are sometimes known as "deceptive trade practices" or "unfair commercial activities." The employment of various dishonest, fraudulent, or immoral ways to gain business is referred to as unfair commercial practices. Misrepresentation, fraudulent advertising or representation of an item or service, tied selling, bogus free prize or gift promises, deceptive pricing, and noncompliance with manufacturing standards are all examples of unfair commercial practices. Such practices are regarded as illegal by legislation under the Consumer Protection Law, which provides customers with recourse in the form of compensation or punitive damages.

RIGHTS AND LIABILITIES OF THE PARTIES INVOLVED

Contract rights are linked but distinct from contract responsibilities, which are the obligations to the parties to fulfill as both parties are bound by the terms and circumstances of the agreement. No two contracts are one and the same. Every contract contains a unique set of rights. If one party has the right to use the services specified in the contract, the other party must be obligated to provide those services to that party. Various rights are guaranteed to both the parties to which they are entitled by virtue of the contract. These rights can be implied as well as explicit. For example:

- each party has an implied right to fair and transparent disclosure of contractual terms.
- Rights that are expressed explicitly, such as exclusive rights to copyrighted content.

It is the obligation of both parties after entering into the contract to guarantee that they do what they promised. Non-compliance with the contract by them renders them accountable for compensation for what the other party has experienced as a result of the consequences of the breach of contract. If a party fails to execute under the terms of the contract, the other party has several choices based on the causes and circumstances.

PROBLEMS WITH ONE-SIDED CONTRACTS

nowadays one-sided contracts are used to induce the free will of the other party. indeed one-sided contracts have their own benefits such as making an agreement with a number of people at the same time and also saving time and cost-efficient but despite these perks, there still, have various drawbacks.

These agreements are sometimes referred to as monotonous agreements because the buyer is frequently put on the back foot by the clauses made by the other party and has no choice but to accept and adhere to the terms of the said agreement.

Another problem with a one-sided contract is the other party lacks bargaining power and the only option left to them is either to accept the agreement or deny it. Sometimes one-sided contract contains arbitrary clauses which give undue advantage to the offeror. The contracts are also prone to manipulative terms to derive unfair benefits from the contract. For example In the builder buyers agreement, In the event of a buyer payment default, a typical builder-buyer agreement would include provisions requesting 20% interest. If the builder fails to complete the project on time, he will be penalized with only 2% interest.

POSSIBLE SOLUTIONS

Many people simply sign the contract in the hope of the best. Although this blind faith works on occasion, it is only one out of a thousand times. However, there are some simple steps that can be taken to improve the contract's balance.

1. By requesting that the contractor modify certain terms and conditions. They generally use the same contract for all parties, but they did so for the sake of simplicity. However, just because the draft includes some one-sided terms does not mean that the contractor will not change them for the other party. However, many people did not ask about it because they believed the contract was unchangeable.
2. By remembering that not all contractual provisions are legally binding. Some of the contracts contain unenforceable clauses.
3. Finally, being willing to walk away from an uneven contract may be your greatest defense. It will also allow you to engage in a contract that you believe would be beneficial to you.

SUPREME COURT OBSERVATION REGARDING ONE-SIDED CONTRACTS

In one of the landmark cases name **Pioneer Urban Land And others v. Govindan Raghavan (2019)**, it was stated that "a term of a contract will not be final and binding in nature if it reveals that the flat purchaser had no option but to sign on the dotted line, on the contract which is formed by the builder." In this case, Supreme Court ruled that the inclusion of one-sided conditions in a builder-buyer agreement constituted unfair commercial conduct

under Section 2 (1)(r) of the Consumer Protection Act of 1986. The bench, which included Justices Indu Malhotra and UU Lalit, also stated that a builder may not attempt to bind a flat buyer to one-sided contractual obligations included in the builder Buyer's Agreement.

The Supreme Court of India confirmed in **Ireo Grace Realtech Pvt. Ltd. vs Abhishek Khanna & Ors** that the Consumer Protection Act 1986 empowers consumer forums to reject one-sided provisions in contracts if they constitute an unfair commercial practice. This judgment essentially elevates the situation under the 1986 Act to that of the 2019 Act, and the ruling may not be limited to claims against developers. Aside from that, the inclusion of "unfair contract" provisions in the 2019 Act, as well as the right to set them aside, may force sellers and service providers to reconsider the practice of utilizing standardized "take it or leave it" contracts in their dealings with consumers.

CONCLUSION

In different judgments, the Supreme Court aims to guarantee that parties in uneven bargaining situations are placed on a fair basis. Despite, several legislation enacted by legislators to address the one-sidedness of contracts, many individuals are still forced to sign on the dotted line, on the contract established by the other parties to the deal. Finally, it may be argued that the party should not compete with the other party on the basis of one-sided contractual conditions.

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